IN THE

Supreme Court of the United States

October Term, 1960

No. 14

B. T. SHELTON, *et al.*,

Appellants,

v.

EVERETT TUCKER, JR., President, etc., *et al.*

On Appeal from the United States District Court for the Eastern District of Arkansas

BRIEF FOR APPELLANTS

ROBERT L. CARTER,
20 West 40th Street,
New York, New York.

THAD D. WILLIAMS,
800½ West 9th Street,
Little Rock, Arkansas.

Attorneys for Appellants.

HAROLD B. ANDERSON,
GEORGE HOWARD, JR.,
of Counsel.

INDEX

	PAGE
Opinion Below	1
Jurisdiction	1
Questions Presented	2
Statute Involved	2
Statement	6
Summary of Argument	9
Argument:	
I. Act 10 Destroys Academic Freedom and Deprives the Public School Teacher of Freedom of Association and Privacy In Violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States	13
II. Act 10 Is Designed to Prevent Exposure In the Classroom to Any Views At Variance With the State's Policy in the Field of Race Relations	17
Conclusion	19
Appendix: Act 115 of 1959	21

Table of Cases

Adler v. Board of Education, 342 U. S. 485 ..... 9, 10, 11, 13, 14, 16

Bates v. Little Rock, 361 U. S. 516 ..... 10, 11, 15, 18

Beilan v. Board of Education, 357 U. S. 399 ..... 9, 10, 11, 13, 14, 15

Butler v. Michigan, 352 U. S. 380 ..... 15, 16

Carr v. Young, — Ark. —, ... 11

Cantwell v. Connecticut, 310 U. S. 296 ..... 11, 12, 14, 16

Carlson v. California, 310 U. S. 106 ..... 15, 16

Garner v. Los Angeles Board of Public Works, 341 U. S. 716 ..... 9, 10, 11, 14, 15

PAGE

Kingsley Corp. v. Regents of the University of New York, 360 U. S. 684 16

Lerner v. Casey, 357 U. S. 468 ..... 9, 10, 11, 13, 14
Lowell v. Griffin, 303 U. S. 404 16

Milk Wagon Drivers Union v. Meadow Moor Dairies, 312 U. S. 287 16

N. A. A. C. P. v. Alabama, 357 U. S. 449 ..9, 11, 14, 15, 17, 18

Poulous v. New Hampshire, 345 U. S. 395 15

Roth v. United States, 354 U. S. 476 ..... 10, 15, 16

Sai v. New York, 334 U. S. 558 15
Slochower v. Board of Education, 350 U. S. 551 13
Smith v. California, 361 U. S. 147 ..... 15, 16
Staub v. Baxley, 355 U. S. 313 16
Sweezy v. New Hampshire, 354 U. S. 234 .....9, 11, 12, 13, 14, 15

Thomas v. Collins, 323 U. S. 516 ..... 9, 15
Thornhill v. Alabama, 310 U. S. 88 ..... 12, 15

Whitney v. California, 274 U. S. 357 10
Wieman v. Updegraff, 344 U. S. 183 .....11, 12, 13, 14, 15

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BRIEF FOR APPELLANTS

Opinion Below

The opinion of the United States District Court for the Eastern District of Arkansas (R. 103-116) is reported at 174 F. Supp. 351.

Jurisdiction

This suit was initiated pursuant to Title 28, United States Code, Sections 1331, 1343, 2281, 2201 and 2202 seeking a judgment declaring Act 10 (requiring teachers to disclose all organizational activities) of the 1958 2nd Extraordinary Session, and Act 115 (making members of the National Association for the Advancement of Colored People ineligible for public employment) of the 1959 Regular Session of the General Assembly of Arkansas

unconstitutional, as violative of the Fourteenth Amendment to the Constitution of the United States and injunctive relief against their enforcement.

The opinion and judgment of the court below were entered on June 8, 1959 (R. 115), pursuant to which Act 115 was held unconstitutional; and Act 10 was sustained as a proper exercise of state power. Notice of appeal was filed in that court on June 25, 1959 (R. 118-120). Orders extending the time to docket the cause in this Court were entered on August 3, 1959 (R. 121), September 16, 1959 (R. 122), and October 16, 1959 (R. 122-3) by Judge J. Smith Henley, one of the judges who heard the cause in the court below. The statement of jurisdiction was filed on November 23, 1959, and probable jurisdiction was noted on January 25, 1960. Jurisdiction of this Court rests on Title 28, United States Code, Section 1253.

Question Presented

Whether a state may require as a condition of employment that teacher and administrative personnel in public institutions of learning disclose to school authorities all membership, regular contribution or dues paying organizational connections within the past five years, without contravening the constitutional guarantees of academic freedom and freedom of association secured under the due process clause of the Fourteenth Amendment to the Constitution of the United States, where the disclosures thus required are not restricted to activities and associations relevant to a determination of trustworthiness, fitness, reliability, competence or suitability for employment in the school system?

Statute Involved

Act 10, 2nd Extraordinary Session of 1958 of the General Assembly of Arkansas provides as follows:

FOR AN ACT TO BE ENTITLED: "AN ACT TO PROVIDE ASSISTANCE IN THE ADMINISTRATION AND FINANCING OF PUBLIC SCHOOLS, AND TO REQUIRE AFFIDAVITS FROM ADMINISTRATIVE AND PROFESSORIAL EMPLOYEES, INCLUDING SUPERINTENDENTS, PRINCIPALS, AND INSTRUCTORS OF THE ELEMENTARY AND SECONDARY SCHOOLS, AND COLLEGES AND UNIVERSITIES OF THE STATE OF ARKANSAS RELATIVE TO ALL INCORPORATED AND/OR UNINCORPORATED ASSOCIATIONS AND ORGANIZATIONS TO WHICH THEY HAVE BELONGED OR HAVE BEEN AFFILIATED WITH FOR THE PAST FIVE YEARS; TO PROVIDE PENALTIES FOR FAILURE TO COMPLY, AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. It is hereby declared that the purpose of this act is to provide assistance in the administration and financing of the public schools of Arkansas, and institutions of higher learning supported wholly or in part by public funds, and it is hereby determined that it will be beneficial to the public schools and institutions of higher learning and the State of Arkansas, if certain affidavits of membership are required as hereinafter provided.

SECTION 2. No superintendent, principal, or teacher shall be employed or elected in any elementary or secondary school by the district operating such school, and no instructor, professor, or other teacher shall be employed or elected in any institution of higher learning, or other educational institution supported wholly or in part by public funds, by the trustees or governing authority thereof, until, as a condition precedent to such employment, such superintendent, principal, teacher, instructor or professor shall have filed with such board of trustees or governing authority an affidavit as to the names and addresses of all incorporated and/or unincorporated associations and organizations that such superintendent, principal, teacher, instructor or pro-

fessor is or within the past five years has been a member of, or to which organization or association such superintendent, principal, teacher, instructor, professor or other teacher is presently paying, or within the past five years has paid regular dues, or to which the same is making or within the past five years has made regular contributions.

SECTION 3. Such affidavit may be in substantially the following form:

STATE OF ARKANSAS

COUNTY OF .....

I, (name of Affiant), being an applicant for the position of ....., at (name of school or institution), being first duly sworn, do hereby depose and say that I am now or have been within the past five years a member of the following organizations and no others:

(names and addresses of organizations)

and further, that I am now paying, or within the past five years have paid, regular dues or made regular contributions to the following organizations and no others:

(names and addresses of organizations)

.....
Signature of Affiant

Subscribed and sworn to before me this ..... day of .....

.....
Signature and Title of Official

SECTION 4. Any contract entered into by any board of any school district, board of trustees of any institution of higher learning, or other educational institutions supported wholly or in part by public funds, or by any governing authority thereof, with any superintendent, principal, teacher, instructor, professor, or other instructional personnel, who shall not have filed the affidavit required in Section 2

hereof prior to the employment or election of such person and prior to the making of such contracts, shall be null and void and no funds shall be paid under said contract to such superintendent, principal, teacher, instructor, professor, or other instructional personnel; any funds so paid under said contract to such superintendent, principal, teacher, instructor, professor, or other instructional personnel, may be recovered from the person receiving the same and/or from the board of trustees or other governing authority by suit filed in the circuit court of the county in which such contract was made, and any judgment entered by such court in such cause of action shall be a personal judgment against the defendant therein and upon the official bonds made by such defendants, if any such bonds be in existence.

SECTION 5. Every person who shall wilfully file a false affidavit under the provisions of this act shall be guilty of perjury, shall be punished by a fine of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00) and in addition shall forfeit his license to teach in any of the schools, institutions of higher learning, or other educational institutions supported wholly or in part by public funds in this State. All penalties collected under the terms of this act shall be forwarded to the State Treasurer to be placed by him in the common public school fund.

SECTION 6. If any paragraph, sentence, clause, phrase, or word of this act shall be held to be unconstitutional for any reason, such holding of unconstitutionality shall not affect any other portion of this act; nothing contained herein, however, shall be construed so as to affect the validity of any contract entered into prior to the effective date of this act.

SECTION 7. It is hereby determined that the decisions of the United States Supreme Court in the school segregation cases require solution of a great variety of local public school problems of considerable complexity immediately and which involve the health, safety and general welfare of the people of the State of Arkansas, and that the purpose of this

act is to assist in the solution of these problems and to provide for the more efficient administration of public education. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval.

This legislation became law on September 12, 1958.

Statement

Appellant Shelton, prior to his refusal to comply with Act 10 and his discharge therefor (R. 127-128), had been employed as a teacher in the public schools of the Little Rock Special School District for 25 years (R. 58). On April 3, 1959, he received from the Superintendent of Schools of the District a memorandum advising him of the terms of Act 10. The notice requested that an affidavit listing all his organizational connections over the past five years be signed and completed in the presence of a notary public and returned on the morning of April 13. It was stated that the statute required that the affidavit be filed with the Superintendent before his teacher contract for the 1959-1960 school year could be issued (R. 59).

Instead of complying, appellant advised the Superintendent in writing that he would not fill out the affidavit because it violated his constitutional rights and the constitutional rights of others (R. 59); and on April 21, 1959, the present class action was instituted (R. 1).

On May 2, 1959, an amended complaint, the basis of the present proceedings, was filed in which appellants, the Arkansas Teachers Association, an organization of Negro teachers in the State of Arkansas, and T. W. Coggs, its Executive Secretary (R. 17), joined in the law suit as parties-plaintiff, suing on behalf of the organization and all of its members currently employed in Arkansas as teacher or administrative personnel in institutions supported wholly or in part by public funds (R. 17). The

constitutionality of Act 10 and Act 115[1] was attacked on the grounds that the statutes were invalid on their face and deprived appellants and the class they represent of liberty and property without due process of law, of the equal protection of the laws, and of rights of freedom of speech and of association (R. 23, 24, 27). Declaratory judgments and injunctive relief were sought (R. 28-29).

As an exhibit to the amended complaint, appellant Shelton attached an affidavit setting forth that he was not a member of any organization which advocated the overthrow of the government by force; that he belonged to the National Association for the Advancement of Colored People to help promote the objects described in paragraph 45 of the amended complaint (R. 26), and that he had no knowledge of anything to indicate that the N.A.A.C.P. was or ever had been a captive of any international conspiracy (R. 29-31).

Pursuant to the provisions of Title 28, United States Code, Section 2284, a special statutory court of three judges was designated by the Chief Judge of the Eighth Circuit in an order dated April 27, 1959 (R. 13-14). A temporary restraining order was entered on May 4, 1959 (R. 35-36), extended on May 13, 1959 (R. 36-37) and on May 25, 1959 (R. 102). Appellees answered (R. 37-39; 40-41; 42-43), alleging that the court was without jurisdiction and that the complaint, as amended, failed to state a claim upon which relief could be granted.

On May 25, 1959 a hearing was held in the court below (R. 44-91). At that hearing testimony was introduced showing that appellant Shelton had been employed as a teacher in the Little Rock Special School District for 25 years (R. 58); that there had never been any complaint about his work (R. 58, 63, 69); that he received a memorandum from Mr. Terrell E. Powell, Superintendent of Schools as alleged (R. 58); that he refused to file the required affi-

[1] Act 115 set out in the appendix, *infra*.

davit (R. 59); that he was advised on May 5, 1960, that his contract would not be renewed for the 1959-60 school term (R. 60); that contracts were usually renewed in May (R. 61); that unless notified to the contrary within ten days after school closes, the teacher is automatically employed for the next school term (R. 79); that he was not a member of the Communist Party or of any organization advocating the overthrow of the government by force (R. 61); that he knew the purposes of the N.A.A.C.P. were to eliminate racial discrimination, secure the vote for all qualified citizens, seek justice in the courts, secure equal job opportunities and eliminate mob violence and police brutality; that these purposes expressed the reasons for his membership in the organization; and that he had no knowledge of the N.A.A.C.P. being a captive of an international Communist conspiracy (R. 62).

Testimony was introduced concerning the Arkansas Teachers Association and its purposes (R. 75-77); that members of the faculty of the Arkansas AM & N College (a college for Negroes) would be required to comply with Act 10, but contracts had not been issued at the time the temporary restraining order was entered (R. 77); that all teacher personnel returning to the Pine Bluff Special School District for the 1959-1960 school term had filed the contested affidavit as required (R. 78-79).

The Attorney General testified that the Special Education Committee of the Legislative Council of the State of Arkansas had made an investigation and had concluded that racial unrest in Arkansas was inspired by the Communist Party, and that the N. A. A. C. P. was "heavily infiltrated with subversives and wittingly or unwittingly" had become a captive of Communist apparatus and that the Council's conclusions had been made available to the legislature when Act 115 was enacted. (R. 81-88).

On June 8 the opinion and judgment here at issue were entered. The court struck down Act 115 as contravening the Fourteenth Amendment to the Constitution of the

United States and entered a declaratory judgment that the state could not require that public employees be discharged merely because of membership in the N. A. A. C. P. Act 10 was sustained, however, on the grounds that decisions of this Court had vindicated the state's authority to require employees to disclose their organizational connections. In reaching this conclusion, the court placed heavy reliance upon *Garner* v. *Los Angeles Board of Public Works*, 341 U. S. 716; *Beilan* v. *Board of Education*, 357 U. S. 399; *Lerner* v. *Casey*, 357 U. S. 468; and *Adler* v. *Board of Education*, 342 U. S. 485 (R. 103-116).

After entry of the judgment below, the Little Rock Special School District notified appellant Shelton that he had until June 25, 1959, to comply with Act 10 (R. 125). When the deadline passed without his filing the required affidavit, appellant was advised on June 30 that his contract would not be renewed for the 1959-60 school term (R. 127-128). These post judgment facts have been made a part of this record pursuant to stipulation of the parties (R. 123-124).

Summary of Argument

Act 10 is another state attempt to mandate conformity and to suppress dissidence in the field of race relations by restrictions which deter the exercise of rights of freedom of association. Here, it is the freedom of association and the privacy of the public school teacher and the public's interest in the maintenance of academic freedom in public institutions of learning which are adversely affected.

The preservation of academic freedom and freedom of association of the individual is of paramount importance, not only as a necessary prerequisite to personal liberty, but as an indispensable ingredient of an open society. See, e. g., *Thomas* v. *Collins*, 323 U. S. 516; *Sweezy* v. *New Hampshire*, 354 U. S. 234; N. A. A. C. P. v. *Alabama*, 357

U. S. 449; *Bates* v. *Little Rock*, 361 U. S. 516; *cf.* Mr. Justice Brandeis, concurring in *Whitney* v. *California*, 274 U. S. 357, 373, 376; *Roth* v. *United States*, 354 U. S. 476.

The court below upheld Act 10 on the mistaken assumption that its sweeping interference with academic freedom and the personal liberty and privacy of the school teacher is consistent with decisions of this Court validating state intrusions in this area. But nothing said in *Garner* v. *Los Angeles Board of Public Works*, 341 U. S. 716; *Adler* v. *Board of Education*, 342 U. S. 485; *Beilan* v. *Board of Education*, 357 U. S. 399; or *Lerner* v. *Casey*, 357 U. S. 468, or any other decisions of this Court, countenances the all-inclusive curtailment of academic and personal freedom here involved. While appellants do not disclaim a valid state interest in protecting the integrity of the public school system, it cannot be demonstrated that such protection necessitates the suppression of academic freedom and the teacher's right to freedom of association which results from enforcement of this statute.

The 2nd Extraordinary Session of the General Assembly of Arkansas, at which Act 10 was enacted, was called in the summer of 1958 to promulgate a package of legislation specifically designed to preserve racial segregation in the public schools (R. 91-102). The obvious aim of the statute under contest here was to attempt to close off the classroom from sentiment favoring school desegregation or opposition to the state's decision to defy the Constitution of the United States. Act 115, enacted at the subsequent Regular Session of the General Assembly, in barring public employment to members of the N. A. A. C. P., merely made explicitly applicable to all public employees what Act 10 necessarily implies in respect to teachers, principals and superintendents.

Appellants respectfully submit, therefore, that the striking down of Act 115, without invalidating Act 10 as well, leaves school authorities free to achieve the unconstitutional objectives of Act 115 in the school system.

Moreover, without regard to Act 115, Act 10 is a pernicious and invidious restriction on the freedom of association of the public school teacher. It is now settled law that public employees are not bereft of constitutional rights of freedom of speech and freedom of association. *Wieman* v. *Updegraff*, 344 U. S. 183; *Sweezy* v. *New Hampshire, supra; Beilan* v. *Board of Education, supra; cf.* Mr. Justice Frankfurter's concurring opinion in *Garner* v. *Los Angeles Board, supra,* at 724, 725.

Of course, a state may take appropriate measures to screen teachers to determine their trustworthiness, reliability, fitness and suitability for training the young. See *Beilan* v. *Board of Education, supra; Adler* v. *Board of Education, supra;* and *Lerner* v. *Casey, supra; Garner* v. *Los Angeles Board of Public Works, supra.* Here, however, no relationship between the unqualified disclosures required and appropriate inquiries concerning fitness and suitability has been shown. *Cf. Garner* v. *Los Angeles Board of Public Works, supra; Adler* v. *Board of Education, supra; Lerner* v. *Casey, supra; Beilan* v. *Board of Education, supra.* Nor has any relationship been demonstrated between the statute's stated purposes—administration, financing and benefiting the schools—and the restriction on First and Fourteenth Amendment rights which Act 10 effects. See *N. A. A. C. P.* v. *Alabama, supra; Bates* v. *Little Rock*, 361 U. S. 516.

The rationale of the court below and of the Supreme Court of Arkansas in *Carr* v. *Young*, — Ark. — S. W. — (No. 83, pending here) in upholding Act 10 seems to be that because some associational relationships may be relevant to the issue of teacher fitness, the teacher may be deprived of all rights of freedom of association. But that approach cannot be applied here. While freedom of association and academic freedom are subject to regulation, they may be limited by only the narrowest restriction necessary to meet the specific evil of state concern.. See *Cantwell* v.

Connecticut, 310 U. S. 296, 307; *Thornhill* v. *Alabama*, 310 U. S. 88, 105.

The decisions of this Court recognize the public's vital interest in the maintenance of the freedom of speech and association of the teacher because of the important role the teacher plays in extending the frontiers of knowledge, in helping the young develop a capacity for critical and independent thought, and a discipline of inquiry, open-mindedness and adventurousness. These are essential characteristics of the American personality if our democratic institutions are to survive. See *Wieman* v. *Updegraff*, *supra*; *Sweezy* v. *New Hampshire*, *supra*. The effect of this statute is to render public school teachers spiritless and afraid, fearful of all associations and participation in any activity which school authorities might possibly regard as inappropriate. Thus, intellectual curiosity will be discouraged, and in the classroom only the "safe" ideas are certain to obtain a hearing.

The fact that the statute carries no explicit penalty is unimportant. In Arkansas, teachers must sign new contracts for each forthcoming school year. They are, therefore, under the pressure of constant surveillance as to their associations, their ideas, their beliefs and relationships. They know and understand that they must carefully avoid all questionable and unpopular causes which might be frowned upon by their superiors. Appellants submit that Act 10 constitutes a crude attempt to legislate uniformity in the classroom. As such, it threatens fundamental freedoms protected against governmental intrustion in our society and must not prevail.

ARGUMENT

I.

Act 10 Destroys Academic Freedom and Deprives the Public School Teacher of Freedom of Association and Privacy In Violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Academic freedom is unquestionably one of the great areas of personal liberty preserved from governmental restriction by the First and Fourteenth Amendments to the Constitution of the United States. *Wieman* v. *Updegraff*, 344 U. S. 183; *Sweezy* v. *New Hampshire*, 354 U. S. 234; and see *Adler* v. *Board of Education*, 342 U. S. 485; *Beilan* v. *Board of Education*, 357 U. S. 399; *Lerner* v. *Casey*, 357 U. S. 468; *Slochower* v. *Board of Education*, 350 U. S. 551. Its preservation is deemed fundamental to our society. See *Wieman* v. *Updegraff*, *supra*; *Sweezy* v. *New Hampshire*, *supra*.

Obviously, the teacher's right of freedom of association and privacy outside the classroom are not only aspects of his personal freedom, but essential if academic freedom is to prevail. For if the teacher is to act as a conduit of the knowledge of the past and a bridge to the extensions of knowledge in the future, he must be free of restraints, inhibitions and fears which curb independent thought. Thus Act 10, in restricting the teacher's right of freedom of association, impinges not merely upon the teacher's privacy and liberty as an individual, but affects society's interest in the full development of the minds of the young. A claim, therefore, that a state restricts a teacher's right to freedom of association poses a question of serious constitutional import. See *Wieman* v. *Updegraff*, *supra*; *Sweezy* v. *New Hampshire*, *supra*.

Although the state's interest in maintaining the integrity of the public schools may warrant the promulgation of

regulations designed to insure the character, fitness, trustworthiness, suitability, professional competence and loyalty of the teacher in public institutions of learning, see *Garner* v. *Los Angeles Board of Public Works*, 341 U. S. 716; *Adler* v. *Board of Education*, *supra*; *Beilan* v. *Board of Education*, *supra*; *Lerner* v. *Casey*, *supra*, it does not follow that academic freedom can thereby be destroyed or that the teacher can be deprived of all of his constitutional rights of freedom of association as a condition of public employment. See *Wieman* v. *Updegraff*, *supra*; *Beilan* v. *Board of Education*, *supra*; *cf.* Mr. Justice Frankfurter concurring in *Garner* v. *Los Angeles Board of Public Works*, *supra* at 724, 725; *Sweezy* v. *New Hampshire*, *supra*.

This Court has sustained state inquiries into past and present membership in the Communist Party as appropriate to a determination of fitness and suitability for public employment *Garner* v. *Los Angeles Board of Public Works*, *supra*; *Adler* v. *Board of Education*, *supra*. Dismissal, based upon a refusal to answer questions concerning membership in subversive organizations, was sustained as relevant to a determination that such refusal evidenced a lack of candor and untrustworthiness inappropriate to one in the teaching profession. *Beilan* v. *Board of Education*, *supra*. Yet, a blanket restriction barring from public employment any teacher who had been a member of the Communist Party, *Wieman* v. *Updegraff*, *supra*, and the forced disclosure of the political affiliation of the teacher or the contents of a classroom lecture, *Sweezy* v. *New Hampshire*, *supra*, were invalidated.

The yardstick which is used to measure the propriety of state action affecting freedom of association is whether the state's regulation can be justified as needed to protect some societal interest of compelling importance. *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449. Where such a showing has been made, the restriction will be permitted if the proscriptions are set out in a statute narrowly drawn to meet the supposed evil. See *Cantwell* v. *Connecticut*, 310 U. S. 296, 307;

Thornhill v. *Alabama*, 310 U. S. 88, 105; *Poulous* v. *New Hampshire*, 345 U. S. 395, 404, 405; *Sai* v. *New York*, 334 U. S. 558, 560; *cf. Thomas* v. *Collins*, 323 U. S. 516, 530; *Roth* v. *United States*, 354 U. S. 476, 488, provided there is a relevant connection between the curtailment effected and the valid objective the statute seeks to attain. *Cf. N.A.A.C.P.* v. *Alabama*, *supra*; *Bates* v. *Little Rock*, 361 U. S. 516; *Butler* v. *Michigan*, 352 U. S. 380, 383; *Smith* v. *California*, 361 U. S. 147. In *Garner* and *Beilan*, the state's acts measured against this yardstick were upheld, but in *Wieman* and *Sweezy* the restrictions were struck down as in excess of the state's power.

Here again the Court is faced with the basic problem with which it was confronted in those cases. Individual rights of freedom of association and the public interest in the maintenance of the free flow of knowledge in the classroom must be weighed against the state interest in protecting the integrity of its school system.

But, appellants submit, this case poses little of the difficulty or subtlety with which the Court in *Garner* and *Beilan* had to concern itself. Here Act 10 effects a sweeping curtailment of the liberty of the public school teacher and drastically interferes with academic freedom. Assuming that the statute may be read without regard to the fact that it was enacted at the 2nd Extraordinary Session to impede implementation of the constitutional rights of Negro children to a public education free of discrimination (see *infra*), the statute's objectives, vaporous and amorphous as stated, are to provide "assistance in the administration and financing" and to benefit the public schools (See § 1, *ante*). No mention is made of teacher fitness, suitability or trustworthiness. Neither by its terms, nor as construed, is Act 10 limited solely to disclosures relevant to that determination.

While freedom of association and academic freedom are not absolutes, the Court, in determining the validity of a governmental deterrent affecting those freedoms, must

reach decision pursuant to a formula which accords the "widest scope of freedom . . . to the adventurous and imaginative exercise of the human spirit." Mr. Justice Frankfurter, concurring in *Kingsley Corp.* v. *Regents of the University of New York*, 360 U. S. 684, 694, 695.

As Mr. Justice Brennan said in *Roth* v. *United States*, *supra* at page 488:

> . . . The door barring federal and state intrusion into this area [of freedom of speech and association] cannot be left ajar; it must be tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interests.

This statute does complete violence to that principle. It infringes freedom of association and curbs academic freedom to a far greater degree than is essential to secure whatever countervailing legitimate state interest may be involved. See *Butler* v. *Michigan*, *supra*; *Smith* v. *California*, *supra*. As such, the statute is unconstitutional on its face. See *Cantwell* v. *Connecticut*, *supra*; *Carlson* v. *California*, 310 U. S. 106; *Lowell* v. *Griffin*, 303 U. S. 404, 451; *Milk Wagon Drivers Union* v. *Meadowmoor*, 312 U. S. 287, 297; *Staub* v. *Baxley*, 355 U. S. 313, 321.

Moreover, there is no showing that curtailment of teacher freedom and privacy will in any way aid in administrating, financing or benefiting the schools. Indeed, the result most likely to flow from enforcement of the statute is stultification, stodginess and repression in the classroom. What Mr. Justice Douglas said in *Adler* v. *Board of Education*, *supra* at pp. 508, 509, 510 in dissent bears repeating here:

> . . . Fearing condemnation [the teacher] will tend to shrink from any association that stirs controversy. In that manner freedom of expression will be stifled.
>
> . . .
>
> . . . Supineness and dogmatism take the place of inquiry. A 'party line'—as dangerous as the 'party

> line' of the Communists—lays hold. It is the 'party line' of the orthodox view, of conventional thought, of the accepted approach. A problem can no longer be pursued with impunity to its edges. Fear stalks the classroom. The teacher is no longer a stimulant to adventurous thinking, she becomes instead a pipeline for safe and sound information. A deadening dogma takes the place of free inquiry. Instruction tends to become sterile, pursuit of knowledge is discouraged, discussion often leaves off where it should begin.

This, in sum, sets forth the basic reasons why the instant statute is at war with First and Fourteenth Amendment guarantees of personal freedom.

The fact that the statute merely requires the organizational relationship to be disclosed without necessitating the discontinuance of employment therefor does not save it from condemnation. The deterrent effect is the same. The pressures on the teacher to conform, to play it safe, and not to exercise his constitutional rights of freedom of association will be as intense, as if the statute provided a specific penalty for deviations from the norm. His job is still very much at stake and his freedom greatly circumscribed. See *N.A.A.C.P.* v. *Alabama, supra.* The teacher will fear and shun all controversial activities. He will fear, in fact, to engage in any activity, however lawful, which is believed to be objectionable to school authorities. The infringements on freedom which Act 10 effects endanger the basic structure of our society, and, it is respectfully submitted, the statute must fall.

II.

Act 10 Is Designed to Prevent Exposure In the Classroom to Any Views At Variance With the State's Policy in the Field of Race Relations.

As has been stated, Act 10 was enacted at the 2nd Extraordinary Session of the General Assembly of Arkansas in 1958. The purpose of this legislative session was to devise

ways to avoid and impede the implementation of this Court's decision in The School Segregation Cases (R. 91-101). All legislation proposed and adopted at this session was aimed at the continued preservation of segregation in the state's school system (R. 99-100). Act 10 was a part of the package of legislation adopted and, as is clear on its face, its objective was to assist in the accomplishment of the overall purpose which the other legislation sought to serve.

Act 10 unquestionably and openly seeks to achieve an enforced conformity on the issue of school desegregation in all public institutions of learning. Obviously, membership in the N.A.A.C.P. or support of its views is not favored by state authorities (R. 95-99). This official attitude, implicit in Act 10, became unmistakably clear with the enactment of Act 115 which rendered membership in the N.A.A.C.P. a basis for disqualification for public employment.

The striking down of Act 115, appellants respectfully submit, without at the same time striking down Act 10, does not remedy the evil which Act 115 sought to accomplish. School authorities may now achieve through the indirect means which Act 10 affords all that was held beyond the state's reach in Act 115. Few teachers, who desire to remain in the school system, will become or remain members or contributors of the N.A.A.C.P., as long as their connection with that organization must be disclosed to school authorities as a condition of continued employment. Thus, the right of association in the N.A.A.C.P. to engage in lawful activity to improve the Negro's status, upheld against state interference in *N.A.A.C.P.* v. *Alabama, supra;* and *Bates* v. *Little Rock, supra,* is now denied to teachers in public institutions in Arkansas.

Moreover, Act 10 effectively bars membership in any organization favoring desegregation or opposed to the state's racial policies. In depriving the teacher of rights of freedom of association in respect to dissident organizational activity in the field of race relations, Act 10 prevents

examination and discussion of the merits of concepts of racial equality and the fallacy of concepts of white supremacy. As injurious as Act 10 is in stifling discussion on these issues, its harm is far more extensive and pernicious. Today, conformity to the view that racial segregation must prevail is the present objective of the law, but the statute can be used with equal effectiveness to stifle any dissident ideas or the discussion of any unorthodox view in the classroom.

To paraphrase Mr. Justice Douglas—so long as the teacher meets appropriate standards of trustworthiness, suitability and fitness, his private life, political philosophies and social creed should be free from scrutiny of the state. Since the state has demonstrated no justifiable basis for its sweeping curtailment of the fundamental constitutional rights here involved, appellants respectfully submit, Act 10 must be struck down.

CONCLUSION

Wherefore, for the reasons hereinabove stated, the judgment of the court below should be reversed.

Respectfully submitted,

ROBERT L. CARTER,
20 West 40th Street,
New York, New York.

THAD D. WILLIAMS,
800½ West 9th Street,
Little Rock, Arkansas.

Attorneys for Appellants.

HAROLD B. ANDERSON,
GEORGE HOWARD, JR.,
of Counsel.

Appendix

Act 115 of 1959

An Act to Make Unlawful the Employment by the State, School District or Any County or Municipality Thereof of Any Member of the National Association for the Advancement of Colored People, and to Provide Penalties for Violations

WHEREAS, the National Association for the Advancement of Colored People has, through its program and leaders in the State of Arkansas, disturbed the peace and tranquility which has long existed between the White and Negro races, and has threatened the progress and increased understanding between Negroes and Whites; and

WHEREAS, the National Association for the Advancement of Colored People has encouraged and agitated the members of the Negro race in the belief that their children were not receiving educational opportunities equal to those accorded white children, and has urged the members of the Negro race to exert every effort to break down all racial barriers existing between the two races in schools, public transportation facilities and society in general; and

WHEREAS, the National Association for the Advancement of Colored People has made a strenuous effort to imbue the members of the Negro race with the belief that they are the subject of economic and social strangulation which will forever bar Negroes from improving their standard in life and raising their standard of living to that enjoyed by the White race; and

WHEREAS, the General Assembly believes that in view of the known teachings of the National Association for the Advancement of Colored People and the constant pressure exerted on its members contrary to the principles upon which the economic and social life of our States rests, and that the National Association for the Advancement of

Colored People is so insidious in its propaganda and the fostering of those ideas designed to produce a constant state of turmoil between the races, that membership in such an organization is wholly incompatible with the peace, tranquility and progress that all citizens have a right to enjoy; and

WHEREAS, the Special Education Committee of the Arkansas Legislative Council has found that the National Association for the Advancement of Colored People is a captive of the international communist conspiracy; Now, THEREFORE, BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. It shall be unlawful for any member of the National Association for the Advancement of Colored People to be employed by the State, school district, county or any municipality thereof, and such prohibition against employment by the State, school district, county or any municipality thereof shall continue so long as membership in the National Association for the Advancement of Colored People is maintained.

SECTION 2. The board of trustees of any public school or State supported college shall be authorized to demand of any teacher or other employee of the school, who is suspected of being a member of the National Association for the Advancement of Colored People, that he submit to the board a written statement under oath setting forth whether or not he is a member of the National Association for the Advancement of Colored People, and the immediate employer of any employee of the State or of any county or municipality thereof is similarly authorized in the case any employee is suspected of being a member of the National Association for the Advancement of Colored People. Any person refusing to submit a statement as provided herein, shall be summarily dismissed.

SECTION 3. A person dismissed from, or declared ineligible for, employment under the provisions of this act, may

within four months of such dismissal or declaration of ineligibility be entitled to petition for an order to show cause before any circuit court of the State why a hearing on such charges should not be had. Until the final judgment on said hearing is entered, the order to show cause shall stay the effect of dismissal or ineligibility based on the provisions of this act. The hearing shall consist of the taking of testimony in open court with opportunity for cross-examination. The burden of sustaining the validity of an order of dismissal or declaration of ineligibility by a fair preponderance of the credible evidence shall be upon the person making such dismissal or declaration of ineligibility.

SECTION 4. Any person employing any individual contrary to the provisions of this act shall be subject to a fine of not exceeding one hundred dollars ($100.00) for each separate offense.

SECTION 5. All laws or parts of laws inconsistent herewith are hereby repealed.

SECTION 6. It has been found and is declared by the General Assembly of Arkansas that the National Association for the Advancement of Colored People has operated in the State of Arkansas in such a manner as to create a state of turmoil between the races, which is incompatible with the public welfare, and that enactment of this bill will tend to alleviate some of the adverse activities of such organization. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval.

APPROVED: February 24, 1959.